**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929**

**WP(C).No. 28836 of 2005(G)**

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**PETITIONER:**

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**KERALA STATE ELECTRICITY BOARD**
**REPRESENTED BY ITS SECRETARY,**
**VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.N.N.SUGUNAPALAN, SC, KSEB,**
**ADV. SRI.S.SUJIN.**

**RESPONDENTS:**

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1. **THE GENERAL SECRETARY,**
   **KERALA STATE ELECTRICITY BOARD PETTY**
   **CONTRACTORS AND CONTRACT LINE WORKERS UNION,**
   **NANTHANCODE, THIRUVANANTHAPURAM.**

2. **THE GENERAL SECRETARY,**
   **KERALA STATE ELECTRICITY BOARD,**
   **CONTRACT WORKERS CENTRE (CITU),**
   **BTR MEMORIAL BUILDING, MLE THAMPANOOR,**
   **THIRUVANANTHAPURAM.**

3. **THE GENERAL SECRETARY, KERALA**
   **STATE ELECTRICITY BOARD CONTRACT**
   **WORKERS UNION (INTUC), ANGLES,**
   **ARAMOOLA, THIRUVANANTHAPURAM-32.**

4. **STATE OF KERALA, REPRESENTED BY**
   **THE SECRETARY TO GOVERNMENT, LABOUR AND**
   **REHABILITATION (A) DEPARTMENT,**
   **SECRETARIAT, THIRUVANANTHAPURAM.**

**5. THE PRINCIPAL SECRETARY TO GOVERNMENT,**
**POWER (A) DEPARTMENT, GOVERNMENT OF KERALA,**
**SECRETARIAT, THIRUVANANTHAPURAM.**

**7. INDUSTRIAL TRIBUNAL, PALAKKAD.**

**BY SR. GOVT. PLEADER SRI. R. LAKSHMINARAYAN,**
**ADV. SRI.K.S.MADHUSOODANAN,**
**ADV. SRI.S.RAMESH BABU.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.28836/2005-G:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE AWARD DTD. 15/12/2004 IN I.D. NO. 27/2002 PASSED BY THE INDUSTRIAL TRIBUNAL, PALAKKAD.**

**EXT.P.2: COPY OF THE CERTIFICATE OF REGISTRATION GRANTED UNDER SEC. 7 (2) OF CENTRAL LABOUR (REGULATION & ABOLITION) ACT 1970.**

**EXT.P.3: COPY OF THE JUDGMENT IN O.P. NO. 23291 OF 2000.**

**EXT.P.4: COPY OF THE NOTICE ISSUED TO THE CHAIRMAN OF THE PETITIONER BOARD BY THE SECRETARY OF THE STATE ADVISORY CONTRACT LABOUR BOARD.**

**RESPONDENT'S EXHIBITS:**

**EXT.R1.A: COPY OF THE W.A. NO. 2298/2000 DTD. 13/11/2001 OF THE HONOURABLE DIVISION BENCH.**

**EXT.R1.B: COPY OF THE CLAIM STATEMENT IN I.D. 27/2002 DTD. 12/08/2002.**

**EXT.R1.C: COPY OF THE WRITTEN STATEMENT IN I.D. 27/2002 DTD. 07/10/2002.**

**EXT.R1.D: COPY OF THE REJOINDER FILED BY THE R.1. DTD. 11/11/2002.**

**EXT.R1.E: COPY OF THE ORDER B.O. NO. 1394/95 PS (SD) 2815/93 DTD. 10/07/1995.**

**EXT.R1.F: COPY OF THE JUDGMENT IN O.P. 22005/97 DTD. 28/06/1999.**

**EXT.R.1.G: COPY OF THE PROOF AFFIDAVIT AND DEPOSITION OF R.1. MARKED AS WW1.**

**EXT.R1.H: COPY OF THE DEPOSITION OF ONE PETTY CONTRACTOR-J.NOBLE.JOHN MARKED AS WWD.**

**EXT.R1.I: COPY OF THE DEPOSITION ON THE MANAGEMENT SIDE-T.K. SASI EXAMINED AS MW1.**

**EXT.R1.J: COPY OF THE COMMON JUDGMENT IN O.P. 3932/80 DTD. 01/09/81.**

**//TRUE COPY//**

**prv.**

K.BALAKRISHNAN NAIR, J.

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W.P.(C) NO. 28836 OF 2005-G

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JUDGMENT

The Kerala State Electricity Board challenges Ext.P1 award of the Industrial Tribunal, Palakkad, under which certain directions have been issued to the Board, concerning regularisation of petty contract workers and contract line workers.

2. The brief facts of the case are the following. The contractors doing works, the total cost of which is below Rs.One lakh, are called petty contractors. According to the workmen, the work is awarded to one of the members of the pool of workmen attached to each electricity office. The work is done by all the workmen and the amount received is shared by them. Such awardee of the work is called the petty contractor. There will be change of the petty contractor from time to time and most of the workers assume the role of petty contractor by rotation. In fact, all of them were workers regularly engaged by the concerned officers of the K.S.E.B under the above said arrangement. There was a settlement concerning the service conditions of the workers under the petty contractors on 29.6.1995. It was a conciliation settlement concluded in the presence of the Deputy Labour

Commissioner, Headquarters, Thiruvananthapuram. Soon thereafter, the unions representing the workmen of the petty contractors started raising the demand for regularisation in service. Since the conciliation efforts failed, the Government finally referred the matter for adjudication to the Industrial Tribunal, Palakkad, as per G.O.(Rt) No.806/2002/LBR dated 15.3.2002. Since there was some mistake in the said order, subsequently the Government issued G.O.(Rt) No.2929/2002/LBR dated 27.9.2002, modifying the above said order. The reference order reads as follows:

> "Whether the demand for regularisation of the services of petty contract workers and contract line workers by KSEB is justifiable? If so what relief they are entitled to."

3. Before the Industrial Tribunal the unions filed claim statements, contending that the workmen concerned are regularly engaged by the various offices of the K.S.E.B. They do the regular work normally discharged by the electricity workers of the concerned offices. The existence of a petty contractor as an intermediary is only a sham and pretence. Actually the works were executed under the supervision and control of the officers of the Electricity Board. A person was nominated to act as the contractor to submit the quotation and also receive the payment on completion of the work. According to the unions, the contractors did not have any licence nor the principal employer has any registration under the

provisions of the Contract Labour (Regulation & Abolition) Act, 1970. So, the workmen were actually working for the K.S.E.B for years together on a regular basis, though the payment of wages was through the instrumentality of a petty contractor. They have services ranging from 5 to 25 years.

4. The K.S.E.B filed a statement, disputing the claims of the workmen. According to the Board, it has no connection whatsoever with the workmen concerned. The petty contractors are contractors who offer quotations/tenders when quotations/tenders are invited. Based on the quotation, work is awarded. On completion of the work, the bill amount is paid. There is no privity of contract with the workmen concerned. So, even assuming there is some claim for regularisation, the same can be done only through the machinery provided under the Contract Labour (Regulation & Abolition) Act. The Electricity Board has got licence from the competent authority under the above said Act, as the principal employer.

5. The Tribunal after taking evidence and hearing both sides, rendered Ext.P1 award. From the side of the management MW1 was examined and from the side of the workmen WW1 to WW3 were examined. The management got marked Exts.M1 to M4. From the side of the workmen Exts.W1 to W24 series were marked. Analyzing the evidence on

record the Tribunal found that the arrangement of executing the work through a petty contractor is only a sham and pretence. If the veil is lifted, it can be seen that the workmen are directly engaged by the K.S.E.B. They are doing the works, which are regular in nature and their services are required for the proper functioning of the K.S.E.B. The works normally done by the electricity workers are being done by the workmen concerned. So, based on that finding, the Tribunal issued certain directions concerning the absorption of the workmen, who have at least worked for 1200 days, as on the date of the award. It was ordered that 25% of the vacancies available for the next five years shall be reserved to be filled up by the aforementioned workmen. The selection shall be made by the Public Service Commission and the qualifications, except the age limit shall be as prescribed by the management for appointment of Electricity Workers. Age relaxation shall be granted up to 50 years. The K.S.E.B attacks the award of the Industrial Tribunal.

6. The learned senior counsel Mr.N.N.Sugunapalan, appearing for the K.S.E.B., submitted that the finding of the Tribunal that the existence of a petty contractor between the Board and the workmen is only a sham and pretence, is unsustainable in law. There is genuine relationship of awarder and contractor between the K.S.E.B and the petty contractors. The

workmen concerned are engaged only by the contractor. Secondly, it was contended that the direction to absorb the petty contractors also is made, exceeding the terms of reference of the Government. The Government referred only the dispute concerning the regularisation of the contract workers and not the petty contractors. Thirdly, it was contended that the provisions of the K.S. & S.S.R and such other Rules framed under Article 309 of the Constitution of India are made applicable to the employees of the K.S.E.B. Their recruitment and service conditions are governed by such provisions. In the face of those provisions, the direction to absorb the workers under the contractor is unjustified. Those Rules will prevail over the provisions of the I.D. Act. Fourthly, it was contended that the P.S.C is not a party to the proceedings. In view of the provisions of the Kerala Public Service Commission (Additional Functions) Act, 1963, appointments to various posts in the K.S.E.B can be done only in consultation with the P.S.C., subject to the exemptions granted under the regulations framed under the said Act. So, the P.S.C is not bound by the directions in the award. The K.S.E.B is bound to go by the advice given by the P.S.C. So, the implementation of the award is practically impossible, if the P.S.C does not co-operate.

7. I heard the learned Government Pleader Mr.R.Lakshminarayan for

respondents 4 and 5. I also heard Mr.K.S.Madhusoodanan, learned counsel appearing for the unions. The unions supported the findings of the Tribunal and opposed the contentions of the learned senior counsel for the K.S.E.B.

8. I notice that the finding of the Tribunal that the workmen are regularly working for the K.S.E.B for years together and they are discharging the functions of the electricity workers and the existence of a petty contractor in between them is only an arrangement to get the work done and not a genuine contract arrangement, is a finding of fact, which cannot be disturbed by this Court. The said finding has been arrived at, relying on the depositions of WW1 and WW2. The Tribunal has noticed that their depositions in this regard practically remain unchallenged in the cross-examination. It was also held that no contra evidence has been let in by the K.S.E.B., to disprove the evidence tendered by the witnesses on behalf of the workmen. Going by the evidence on record, I fully agree with the view taken by the Tribunal. At any rate, the finding mentioned above rendered by the Tribunal is definitely a plausible view on the facts and materials on record. Therefore, this Court cannot interfere with the same under Article 226 of the Constitution of India.

9. The next contention relates to the absorption of petty contractors. I notice that two lists of workmen were produced before the Tribunal as

Exts.W23 and W24 series. If the petty contractors have actually worked for 1200 days, they are entitled to be absorbed. In other words, they are also workmen. Therefore, if the direction issued by the Tribunal covers the petty contractors also, the same will not prejudice the K.S.E.B in any manner. So, the contention that the Tribunal has gone beyond the terms of reference cannot be accepted.

10. The submissions made relying on the provisions of the K.S. & S.S.R and such other Rules also cannot be accepted. The Kerala State and Subordinate Services Rules and other Rules, though applicable to the employees of the K.S.E.B., do not have the status of the Rules framed under Article 309 of the Constitution of India. They are only the regulations framed under Section 79(c) of the Indian Electricity (Supply) Act, 1948. If there is any conflict between the regulations and the provisions of the I.D. Act., the provisions of the I.D. Act will prevail, in view of the principles laid down by the Apex Court in **U.P.S.E.Board v. Hari Shanker** (AIR 1979 SC 65) and also in **L.I.C of India v. D.J.Bahadur** (AIR 1980 SC 2181). In the first case, the Apex Court considered whether the provisions of the regulations framed under Section 79(c) will prevail over the provisions of the Industrial Employment (Standing Orders) Act, 1946 and it

was held that the regulations will not have any efficacy to override the provisions of the said Act. In the latter decision, the Apex Court considered whether the regulations concerning the rate of bonus framed under the provisions of the L.I.C Act will prevail over the provisions of the I.D. Act. The Apex Court held that the regulations cannot have any such efficacy. In view of the principles laid down in the above decisions, the contention raised herein that the provisions of the K.S. & S.S.R will override the provisions of the I.D. Act cannot be accepted.

11. Lastly, it was contended that the Electricity Board is bound by the provisions of the Kerala Public Service Commission (Additional Functions) Act, 1963 and the regulations framed thereunder. Therefore, the directions issued by the Industrial Tribunal could not be implemented. The observation of the Tribunal that the provisions of the I.D. Act will prevail over the provisions of the K.P.S.C (Additional Functions) Act does not appear to be correct. But, the Tribunal has issued directions in conformity with the provisions of the K.P.S.C. (Additional Functions) Act. Therefore, the grievance of the K.S.E.B raised in this regard is not sustainable. But, if any difficulty arises in implementing the directions issued by the Tribunal, as a result of the commissions or omissions of the P.S.C., the K.S.E.B can move the Government for appropriate reliefs, as provided under the

provisions of the said Act. It is clarified that the directions in the award will not stand in the way of the K.S.E.B moving the Government and the parties will be governed by the decision of the Government in that regard, subject, of course, to the rights of the aggrieved parties to challenge the same.

12. The learned senior counsel for the K.S.E.B voiced a concern that there is possibility of manipulation of the list of workmen and it may pave the way for the entry of ineligible persons through the back door. I think, the said apprehension is not well founded, as the field of choice of the workmen is confined to the workmen named in Exts.W23 and W24 series lists appended to the award. No worker, whose name does not find a place in the said lists shall be considered for selection. This clarification will prevent the entry of ineligible candidates through the back door.

In the result, the writ petition fails and it is dismissed, subject to the clarifications given above.

16th November, 2007. **K.BALAKRISHNAN NAIR, JUDGE.**

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